IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 10TH AUGUST 2007 / 19TH SRAVANA 1929

WP(C).No. 3012 of 2007(H)

OS.8/2001 of SUB COURT, OTTAPPALAM
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PETITIONER:

P. MOHAMMED, AGED 52 YEARS,
S/O.AHAMMEDKUTTY, PURAKOTTIL HOUSE,
NATTUKAL P.O., THACHANATTUKARA,
MANNARKKAD, PALAKKAD.

BY ADV. SRI.RENJITH THAMPAN

RESPONDENTS:
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1. **CATHOLIC SYRIAN BANK LIMTITED,**
   REPRESENTED BY ITS MANAGER,
   OLAVAKKODE BRANCH, PALAKKAD.

2. **C.A. UNNIKRISHNAN, S/O.APPU GUPTHAN,**
   CHAMPAMPADATH HOUSE, VAKADAPURAM P.O.,
   KARIMPUZHA, PALAKKAD.

BY ADV. SRI.B.S.KRISHNAN SC C.S.BANK
SRI.K.ANAND (A.201)
SMT.LATHA KRISHNAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.3012/2007 H

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE PLAINT IN O.S.NO.8/01 OF THE SUB COURT, OTTAPALAM.**

EXT.P2: **COPY OF THE DECREE IN O.S.8/01 DTD. 25/01/02 OF SUB COURT OTTAPALAM.**

EXT.P3: **COPY OF PETITION E.A.NO.135/05 IN O.S.NO.8/01.**

EXT.P4: **COPY OF THE ENCUMBRANCE CERTIFICATE DTD. 21/10/04 ISSUED BY THE REGISTERING OFFICER.**

EXT.P5: **COPY OF THE OBJECTION FILED BY THE PETITIONER IN E.P.NO.31/02.**

/TRUE COPY/

P.A.TO JUDGE

KSS

M.N.KRISHNAN, J.

WP(C)No. 3012 OF 2007 H

Dated this the 10th August, 2007.

JUDGMENT

This writ petition is preferred challenging Ext.P3 order. The bank had obtained a decree and the present writ petitioner is a guarantor. The decree was a charged one and the mortgaged property was put in auction and now it is in the delivery stage. The decree holder, with the permission of the court, has bid in auction and, according to the writ petitioner, there is absolutely no compliance of Order XXI Rule 72A C.P.C and therefore, the whole sale is invalid and so the delivery should not be effected. Learned counsel for the writ petitioner, in fairness, submits that if breathing time is given his client is prepared to pay the decree debt. The decree holder is a bank. The bank is more interested in getting the amount due to it rather than the property. Therefore, I feel a direction can be given in order to save the property of the writ petitioner as follows:-

i) The writ petitioner is directed to pay the amount of Rs.1 lakh on or before 11.9.2007.

ii) He is directed to pay the balance amount within a period of six months from 11.9.2007.

iii) If he commits default of payment of Rs.1 lakh or

two consecutive instalments as stated above, the decree holder will be at liberty to move the court for effecting delivery of the property.

iv) If an amount of Rs.1 lakh is paid on or before 11.9.2007 the court shall defer the delivery of the property for a period of six months unless there is breach of clause (iii) so as to enable the writ petitioner to wipe off the entire liability and in case of default, delivery will be effected.

M.N.KRISHNAN
Judge

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